

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KLAUS KIETZER

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Appeal No. 1998-2026  
Application No. 08/508,738

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HEARD: MAY 1, 2000

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Before COHEN, MCQUADE, AND BAHR, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6 through 10, all of the claims remaining in the application.

Appellant's invention pertains to an apparatus for the dustfree discharge of fine dust from a dust collector of a cleaning vehicle. A basic understanding of the invention can

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be

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derived from a reading of exemplary claim 6, a copy of which appears in APPENDIX "A" of the brief (Paper No. 18).

As evidence of anticipation, the examiner has applied the documents listed below:

Price et al. (Price)	3,638,561	Feb. 1, 1972
Constructions Mecaniques Agricoles (Germany) <sup>1</sup>	2,330,039	Jan. 10, 1974

The following rejections are before us for review.

Claims 6 through 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Price.

Claims 6 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the German reference (2,330,039).

The full text of the examiner's rejections and response

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<sup>1</sup> Our understanding of this document is derived from a reading of a translation thereof prepared in the United States Patent and Trademark Office. A copy of the translation is appended to this opinion.

to the argument presented by appellant appears in the answer (Paper No. 19), while the complete statement of appellant's argument can be found in the brief (Paper No. 18).

As indicated in the brief (page 4), claims 6 through 10 stand or fall together. In accordance with 37 CFR § 1.192(c)(7), we select claim 6 for review, infra, with the remaining claims standing or falling therewith.

#### OPINION

In reaching our conclusion on the anticipation issues raised in this appeal, this panel of the board has carefully considered appellant's specification<sup>2</sup> and claim 6, the applied

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<sup>2</sup> As disclosed in the specification, "[t]he shutoff flap is kept closed for generating a counterpressure, until the desired compaction is reached. Then, the shutoff valve is opened as a result of the pressure, under which the piston ram is operated in the compacting phase..." (pages 3 and 4) "The pressure control of the flap by the pressure of the piston ram of the compression device" allows continuously compacted cylindrical chunks to form "in any desired degree of compaction." (page 4) "[T]he shutoff flap 9 is kept opened or closed by a further piston-cylinder unit 19, 20 with the aid of an interposed control unit (not shown) that is responsive to the pressure of piston ram 17 (Figure 1) of the piston/cylinder unit." (page 8)

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teachings,<sup>3</sup> and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Initially, we note that anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the

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<sup>3</sup> In our evaluation of the applied references, we have considered all of the disclosures of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966).

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reference, i.e., all limitations of the claims are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The rejection based upon the Price reference

We reverse the rejection of claim 6 under 35 U.S.C. § 102(b) as being anticipated by Price. It follows that the rejection of claims 7 through 10 is likewise reversed since these claims stand or fall with claim 6, as indicated above.

This panel of the board fully comprehends the examiner's analysis of the Price teaching (answer, pages 4 through 7). However, akin to appellant's position (brief, page 5), we are of the view, based upon the overall teaching of Price, that one having ordinary skill in the art would not consider the movement of the centrally pivoted bottom door 42 (Fig. 1) to be away from the discharge end of the compactor "in the direction of discharge," as set forth in claim 6. It is for this reason that the rejection of claims 6 through 10 must be

reversed.

The rejection based upon the German reference

We affirm the rejection of claim 6 under 35 U.S.C. § 102(b) as being anticipated by the German reference. It follows that the rejection of claim 7 is likewise affirmed since this claim stands or falls with claim 6, as indicated above.

From appellant's perspective (brief, pages 7 through 9), the German reference does not disclose a means for biasing a counterpressure means toward a discharge end of a compression chamber to apply a controlled counterpressure to the material being compressed, since the door or floor 4 (bottom) of the grape press is merely locked in a closed position and does not provide the capability of performing a semi-stationary compressing function in which a blocking plug of compacted dust is permitted to move in a controlled manner. We disagree for the following reasons.

In our opinion, one having ordinary skill in the art

would have fairly understood the grape press of the German reference as being capable of compressing fine dust, alone or with grapes. Further, we perceive that, in its latched position (Fig. 1), the closed, offset-pivoted bottom 4 (flap valve) of the German reference, in conjunction with controllable pressure sensor 12, valve 15, and hydraulic cylinder 7, acts to apply a controlled counterpressure to the material being compressed, as now claimed. Therefore, we are not in accord with appellant's understanding (brief, page 9) that the German document fails to disclose the biasing means of the present invention.

This panel of the board points out that the argued "semi-stationary" compressing operation in which a blocking plug is movable in a controlled manner (brief, page 8) is simply not commensurate with the underlying disclosure which clearly addresses only opened and closed positions for the shutoff flap 9; see footnote 3, supra. Consistent with the specification, appellant's Figures 3a and 3b show the closed position of the shutoff flap and Figure 4 shows the opened position.

REMAND TO THE EXAMINER

A. The examiner should consider certain language in claim 6 as to an issue of its conformance with the description requirement of 35 U.S.C. § 112, first paragraph. More specifically, we recognize that the recitation of the counterpressure means being movable "in the direction of discharge" of compressed dust, was first included in a new claim 6, in an amendment (Paper No. 10) submitted subsequent to the filing of the application. Turning to the original disclosure, it addresses a piston ram or rod that operates in a compression tube to compact fine dust and eject a compacted mass, with a counterpressure means or shutoff flap closing the compression tube at its discharge end. As depicted, the centrally pivoted shutoff flap pivots in its movement between its opened (Fig. 4) and closed (Fig. 3b) positions. As such, the direction of the movement of the pivoted counterpressure means or shutoff flap (along an arc) does not correspond to the now claimed direction of discharge of compressed dust. Thus, the overall original disclosure appears to fail to descriptively support the claimed direction of movement of the

counterpressure means in the direction of discharge of the compressed dust.

B. The examiner should also evaluate whether the recitation of "at least a component of such movement of said flap being in the direction of the discharge of compressed dust from said discharge opening" in dependent claim 9 is inconsistent with the recital of movement of the counterpressure means "in the direction of discharge of compressed dust from said compression chamber" in independent parent claim 6, thereby rendering claim 9 indefinite under 35 U.S.C. § 112, second paragraph.

C. With a resolution of the description issue discussed in "A." above, the examiner should additionally assess the subject matter of claims 6 through 10 in light of, for example, the apparatus of a German document (DE 4 94 211)<sup>4</sup> considered with the advantageous feature in the art of counterpressure and biasing means as disclosed by each of

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<sup>4</sup> This document is referenced on page 2 of appellant's application, and a copy thereof is appended to Paper No. 6 in the application file.

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Price and the German reference (2,330,039).

In summary, this panel of the board has:  
reversed the rejection of claims 6 through 10 under 35 U.S.C.  
§ 102(b) as being anticipated by Price; and

affirmed the rejection of claims 6 and 7 under 35 U.S.C. §  
102(b) as being anticipated by the German reference  
(2,330,039).

Additionally, we have remanded the application to the  
examiner to consider the three matters discussed above.

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The decision of the examiner is affirmed-in-part.

AFFIRMED-IN-PART AND REMANDED

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IRWIN CHARLES COHEN	)	)
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
JOHN P. MCQUADE	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

ICC/sld

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